



## OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable B. F. McKee  
County Auditor  
Edinburg, Texas

Dear Sir:

Opinion No. O-2636

Re: Whether lease contract must be  
stamped to be recorded

In your letter of August 14, 1940, you request our opinion as to whether a certain lease contract is required to be stamped under Article 7047e, Vernon's Civil Statutes, in order to be recorded. As we understand your letter, the contract is merely an ordinary one for the rental of a piece of land for a period of years, setting up the periodic rental payments to be made for the use of the property, and in which no lien of any nature is created.

The above statute levies a tax upon "all notes and obligations secured by chattel mortgage, deed of trust, mechanic's lien contract, vendor's lien, conditional sales contract and all instruments of a similar nature which are filed or recorded in the office of the County Clerk," with certain exceptions not material to your inquiry.

Since lease agreements are not specifically named among those subject to the tax, if they are to be taxed it must be under the clause levying the tax upon "all instruments of a similar nature" to those specifically named. However, those specifically named are those which are securitive of certain obligations. Lease contracts as such, containing no agreement creating a lien or some character of security for the rental payments, are not similar to any of the instruments specifically named in the Act, in our opinion. In this connection you will note that the statute does not levy the tax upon instruments which merely describe an obligation but the tax is due only if the tendered instrument secures

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the obligation. The lease contract described by you need not be stamped if our understanding of its contents as above set out is correct.

We have considered the possible effect of Articles 5222 and 5238, Vernon's Civil Statutes, giving landlord's liens. If there is such a lien in the present case, it is by virtue of statute. The lease agreement evidences the obligation. The statute provides security for such obligation. The fact that a landlord's lien may exist to secure the payment of the rental obligation does not, in our opinion, require a stamping of the contract.

Yours very truly

APPROVED AUG 22, 1940

ATTORNEY GENERAL OF TEXAS

*Glenn R. Lewis*  
FIRST ASSISTANT  
ATTORNEY GENERAL

By *Glenn R. Lewis*  
Glenn R. Lewis  
Assistant

GRL:rw

